Supreme Court, U.S.
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No. 09-

IN THE

Supreme Court of the United States

JEANNE BIGGS and CHARLES BIGGS,

Petitioners,

v.

EAGLEWOOD MORTGAGE, LLC and
COUNTRYWIDE BANK, N.A.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fourth Circuit affirmed the district court's award of summary judgment to Countrywide Bank, N.A. and Eaglewood Mortgage, LLC on a claim by homeowners under 18 U.S.C. § 1964 of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, based on use of payment option adjustable rate mortgages in violation of the mail fraud statute, 18 U.S.C. § 1341. The Fourth Circuit found error in the district court's reasoning for granting summary judgment, but affirmed on a new ground, i.e., that the Biggses were not setting out to prove "misrepresentation or their reliance thereon". (App. 10a) The Fourth Circuit's decision reading a "misrepresentation" requirement into the RICO statute and into "scheme or artifice" mail fraud is at variance with the Third Circuit (not requiring an affirmative misrepresentation to prove a RICO violation) and the Ninth, Tenth and Eleventh Circuits (not reading a "misrepresentation" requirement into "scheme or artifice" mail fraud).

Three questions are presented:

1. Does the mail fraud statute, 18 U.S.C. § 1341, require proof of misrepresentation for "scheme or artifice" mail fraud?

2. In a claim under the civil RICO statute, 18 U.S.C. § 1961 *et seq.*, in which the predicate acts under 18 U.S.C. § 1962(c) are "scheme or artifice" mail fraud, must "misrepresentation" be proven?

3. For victims of payment option ARM mail fraud to bring a civil RICO claim, must "misrepresentation" also be proven in addition to "scheme or artifice to defraud" despite the use of the disjunctive in the mail fraud statute?

LIST OF PARTIES

Petitioners are Jeanne Biggs and Charles Biggs, plaintiffs, who were also referred to below as Borrower No. 0124854613 and Mr. and Mrs. B.

Respondents are Countrywide Bank, N.A. and Eaglewood Mortgage LLC, defendants.

Maria Abreu is another homeowner whose motion to intervene as an additional plaintiff was denied.

Settlement Solutions, Aurora Loan Services LLC, Lehman Mortgage Capital, Lehman Brothers, Kevin Decker, Mike Sweeney, Donald Crowe and Michael A. Perry were defendants, dismissed pursuant to settlement agreements.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at *Biggs v. Eaglewood Mortg., LLC*, 2009 U.S. App. LEXIS 25944 (4th Cir. 2009). The Fourth Circuit affirmed the September 18, 2008 decision of the United States District Court for the District of Maryland, reported at *Biggs v. Eaglewood Mortg. LLC*, 582 F. Supp. 2d 707 (D. Md. 2008), as supplemented on January 5, 2009, reported at *Biggs v. Eaglewood Mortg. LLC*, 636 F. Supp. 2d 477 (D. Md. 2009). *See* Appendices A-D.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Fourth Circuit's opinion was rendered on November 20, 2009. The Biggs' Petition for Rehearing with Suggestion for Rehearing *En Banc* was denied on January 26, 2010. *See* Appendix D.

STATUTORY PROVISIONS INVOLVED

Title 18 United States Code, Section 1341

Frauds and swindles

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange,

alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. ***

Title 18 United States Code, Section 1961

Definitions

As used in this chapter –

(1) "racketeering activity" means . . . (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1341 (relating to mail fraud), . . .

Title 18 United States Code, Section 1962

Prohibited Activities

* * *

(c) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

Title 18 United States Code, Section 1964

Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

* * *

> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962.

* * *

STATEMENT OF THE CASE

1. Starting in 2004 and over the following years, Respondent Countrywide Bank, N.A. ("Countrywide") involved itself in widespread use, against homeowners, of a type of adjustable rate mortgage ("ARM") known as a "payment option ARM". Petitioners Jeanne and Charles Biggs, husband and wife who had bought their home in the 1950s, fell victim to Countrywide and its co-conspirators' use of payment option ARMs in violation of the "scheme and artifice" prong of the mail fraud statute.

Although now payment option ARMs and their use of initial teaser interest rates are notorious, back in the time period 2004 through 2007, a mortgage which had an Adjustable Rate Rider (e.g., SA13, SA34, SA57) which established a payment option ARM took in many victims. That Countrywide's own litigation attorneys and the

district judge would misconstrue payment option ARM terms and also whether payment option ARMs and ordinary ARMs both negatively amortize[1] (Appendix A, 8a-9a; Appendix C, 32a), demonstrates how insidious a payment option ARM can be.

In 2004, Countrywide and its co-conspirators used a payment option ARM (SA1-21) against the Biggses in violation of the scheme and artifice prong of the mail fraud statute. In 2006, Countrywide and Eaglewood used a different payment option ARM (SA22-41) against the Biggses in violation of the scheme and artifice prong of the mail fraud statute. In 2007, Eaglewood and its co-conspirators used another different payment option ARM (SA42-63) against the Biggses in violation of the scheme and artifice prong of the mail fraud statute.

2. Petitioners filed their Complaint on October 12, 2007. Respondent Countrywide filed its Motion to Dismiss, or in the Alternative, for Summary Judgment on January 22, 2008. The district court issued its Opinion on September 18, 2008 granting Countrywide's Motion in the form of summary judgment, along with an Order. Petitioners filed a motion for reconsideration, which the district court denied in its Supplemental Opinion dated January 5, 2009. Respondent Eaglewood filed its Motion for Summary Judgment on January 29, 2009, which

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1. Moreover, if a homeowner has a payment option ARM loan, negative amortization does not automatically always necessarily occur, and would not occur in some instances of a homeowner making certain payment choices. Countrywide's summary judgment motion was without evidence of the Biggses' actual payment history on the payment option ARMs.

the district court granted on April 13, 2009 in a Memorandum Opinion along with entry of a Final Order.

3. Petitioners filed their Notice of Appeal May 8, 2009. The Fourth Circuit's decision was entered on November 30, 2009. Petitioners timely filed a petition for reconsideration, which the Fourth Circuit denied on January 26, 2010.

REASONS FOR GRANTING THE PETITION

Whether a non-statutory "misrepresentation" requirement can be read into the mail fraud statute, 18 U.S.C. § 1341, or into the RICO statute in a case in which the predicate acts under 18 U.S.C. § 1962(c) are "scheme or artifice" mail fraud, is an important federal question. How the Fourth Circuit has decided this important federal question conflicts with this Court's jurisprudence and splits with other circuits. Whether victimized homeowners may proceed with a civil RICO claim based on "scheme or artifice" mail fraud without needing to prove "misrepresentation" is an important question of federal law that has not been, but should be, settled by this Court.

I. THE FOURTH CIRCUIT'S NON-STATUTORY "MISREPRESENTATION" REQUIREMENT IS IN CONFLICT WITH THIS COURT'S DECISIONS

The Fourth Circuit's reading a non-statutory "misrepresentation" requirement[2] into a civil RICO claim based on "scheme or artifice" mail fraud is in conflict with this Court's decisions on "scheme or artifice" mail fraud, and with this Court's decisions on the RICO statute.

A. Reading a "Misrepresentation" Requirement into "Scheme or Artifice" Mail Fraud is in Conflict with a Century of this Court's Decisions

The Fourth Circuit's reading a non-statutory "misrepresentation" requirement into "scheme or artifice" mail fraud is in conflict with *Durland v. United States*, 161 U.S. 306 (1896); *Public Clearing House v. Coyne*, 194 U.S. 497 (1904) (citing *Durland*); and *Cleveland v. United States*, 531 U.S. 12 (2000) (citing *Durland*).

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2. There is no "misrepresentation" requirement on the face of the civil RICO statute. Nor does the mail fraud statute on its face contain the "misrepresentation" requirement imposed by the Fourth Circuit. The mail fraud statute's respective "representations" prong and "scheme or artifice" prong are in the disjunctive. The express language of the mail fraud statute, the mail fraud statute's disjunctive nature, and the "scheme or artifice" prong went unaddressed in the Fourth Circuit's decision.

In 1896 when this Court decided *Durland*, the mail fraud statute (which had been enacted in 1872) expressly recited "scheme or artifice" but did not yet expressly recite the additional "representations" prong that is in today's mail fraud statute. In *Durland*, where the defendant "was trying to entrap the unwary, and to secure money from them on the faith of a scheme glittering and attractive in form, yet unreal and deceptive in fact, and known to him to be such", 161 U.S. at 312, this Court rejected the defendant's argument that a misrepresentation was needed, and ruled that the mail fraud statute (which then only included the "scheme or artifice" prong) "includes everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future." *Id.* at 313.

In 1904, this Court in *Coyne* stated,

> the master found that there had been no false representations of existing facts and no unfair dealing with the cooperators; yet, as we held in *Durland v. United States*, 161 U.S. 306, the misrepresentation of existing facts is not necessary to a conviction under a statute applying to 'any scheme or artifice to defraud.'

194 U.S. at 516.

In 1909, Congress amended the mail fraud statute to codify the holding in *Durland* by adding the phrase "or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises". The "scheme or artifice" language remained in the mail fraud statute.

In 2000, this Court in *Cleveland* summarized the history of "scheme and artifice" mail fraud as follows:

> As first enacted in 1872, § 1341 proscribed the use of the mails to further "'any scheme or artifice to defraud.'"*** In 1896, this Court held in *Durland v. United States*, 161 U.S. 306, 313, 40 L. Ed. 709, 16 S. Ct. 508, that the statute covered fraud not only by "representations as to the past or present," but also "suggestions and promises as to the future." In 1909, Congress amended § 1341 to add after "any scheme or artifice to defraud" the phrase "or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." *McNally*, 483 U.S. at 357. We explained in *McNally* that the 1909 amendment "codified the holding of *Durland*," *id.* at 357, and "simply made it unmistakable that the statute reached false promises and misrepresentations as to the future as well as other frauds involving money or property," *id.* at 359.

531 U.S. at 19. Thus, this Court's decisions for over a century preclude reading a "misrepresentation" requirement into "scheme or artifice" mail fraud.

B. Reading a Non-statutory Requirement into the RICO Statute is in Conflict with This Court's Decisions

The Fourth Circuit's decision (Appendix A) reading a non-statutory requirement into the RICO statute conflicts with *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008) (declining to read a first-party reliance requirement into the civil RICO statute, and "hold[ing] that a plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations"); *Boyle v. United States*, __ U.S. __, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009) (stopping with the clear statutory language of the RICO statute, and refusing to consider RICO's statutory purpose or legislative history to narrow the statute); *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 252 (1994) (rejecting the argument that "RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose"); *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 244 (1989) (declining to read "an organized crime limitation into RICO's pattern concept"); *Sedima, S. P. R. L. v. Imrex Co.*, 473 U.S. 479, 481 (1985) (rejecting the view that RICO provides a private right of action "only against defendants who had been convicted on criminal charges, and only where there had occurred a 'racketeering injury'"). Thus, this Court's decisions preclude reading a non-statutory "misrepresentation" requirement into a civil RICO claim based on "scheme or artifice" mail fraud.

II. THE FOURTH CIRCUIT'S NON-STATUTORY "MISREPRESENTATION" REQUIREMENT IS IN A DIFFERENT DIRECTION THAN OTHER CIRCUITS

The Fourth Circuit's decision (Appendix A) reading a non-statutory "misrepresentation" requirement into the mail fraud statute and/or the RICO statute is in a different direction than the Third, Ninth, Tenth and Eleventh Circuits which do not read-in a non-statutory "misrepresentation" requirement. *See Kolar v. Preferred Real Estate Investments, Inc.*, 2010 U.S. App. LEXIS 702 at *19 (3rd Cir. 2010) ("scheme need not involve affirmative misrepresentation"); *United States v. Woods*, 335 F.3d 993, 998 (9th Cir.), *cert. denied*, 540 U.S. 1025 (2003); *United States v. Gallant*, 537 F.3d 1202, 1228 (10th Cir. 2008), *cert. denied*, __ U.S. __, 129 S. Ct. 2026 (2009); *United States v. Lefebvre*, 2006 U.S. App. LEXIS 18857 n.2 (10th Cir. 2006); *United States v. Kennedy*, 64 F.3d 1465, 1476 (10th Cir. 1995); *American United Life Ins. Co.*, 480 F.3d 1043, *reh'g, en banc, denied*, 2007 U.S. App. LEXIS 30371 (11th Cir.), *cert. denied*, 552 U.S. 990 (2007). Thus, certiorari is warranted to resolve a split between the Fourth Circuit and other circuits as to whether to read a non-statutory "misrepresentation" requirement into the mail fraud statute or the RICO statute.

III. WITH THE NATURE OF A RESIDENTIAL MORTGAGE, THE MANY PAYMENT OPTION ARM VICTIMS, AND THE ONGOING FORECLOSURE CRISIS, REVIEW IS PARTICULARLY WARRANTED

Review is particularly warranted where this RICO matter concerns residential mortgages. Such mortgages are long-term (30 years or more) obligations, and for most owner-occupiers, usually the largest lifetime transaction to date in dollar terms. When homeowners are victimized by a mortgage-based RICO violation, the harm to their family finances is deep, and can be multi-generational. When homeowners are thus victimized, others – such as nearby property owners, communities, and tax-collecting entities – are likely to suffer consequences.

Review further is warranted because many homeowners are affected. By way of example, from 2004 to 2008, Countrywide was using payment option ARMs on a scale at least in the tens of billions of dollars,[3] so that many people – including those with active Countrywide "legacy" loans now within Bank of America's purview as well as other victims who are no

3. *See* Countrywide's annual 10-K filings for 2004-2007, at http://www.sec.gov/Archives/edgar/data/25191/000095012905002432/v05932e10vk.htm (pages 40-41); http://www.sec.gov/Archives/edgar/data/25191/000110465906012770/a06-2962_110k.htm (pages 41, 57); http://www.sec.gov/Archives/edgar/data/25191/000110465907015136/a07-4926_110k.htm (page 64); http://www.sec.gov/Archives/edgar/data/25191/000104746908002104/a2182824z10-k.htm (pages 122-123).

longer in an active Countrywide payment option ARM loan – are affected. *See also Leyvas v. Bank of Am. Corp. (In re: Countrywide Fin. Corp. Mortg. Mktg. and Sales Practice Litig.)*, 601 F. Supp. 2d 1201 (S.D. Calif. 2009). Also, others, who are not parties herein, used payment option ARMs against homeowners. *See, e.g., Payan v. Greenpoint Mortgage Funding, Inc.*, 2010 U.S. Dist. LEXIS 668, at *23 (D. N.J. 2010); *Rush v. American Home Mortgage, Inc.*, 2009 U.S. Dist. LEXIS 112530 (D. Md. 2009); *Winter v. Chevy Chase Bank*, 2009 U.S. Dist. LEXIS 99554 (N.D. Calif. 2009); *Nkengfack v. Homecomings Financial LLC*, 2009 U.S. Dist. LEXIS 50792 (D. Md. 2009); *Valenzuela v. American Home Mortgage Investment Trust 2005-2*, 2009 U.S. Dist. LEXIS 31111 (E.D. Calif. 2009); *In re Wachovia Corp. "Pick-a-payment" Mortg. Mktg. and Sales Practice Litig.*, 598 F. Supp. 2d 1383 (J.P.M.L. 2009); *Mincey v. World Sav. Bank, FSB*, 614 F. Supp. 2d 610 (D. S.C. 2008); *Brewer v. Indymac Bank*, 2008 U.S. Dist. LEXIS 73202 (E.D. Calif. 2008); *Cavin v. Home Loan Center, Inc.*, 469 F. Supp. 2d 561 (N.D. Ill. 2007).

Additionally, review is warranted because of the ongoing residential mortgage foreclosure crisis in the United States.

CONCLUSION

For all the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FILED NOVEMBER 30, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1545

JEANNE BIGGS; CHARLES BIGGS,

Plaintiffs - Appellants,

and

BORROWER NO. 0124854613, Mr. and Mrs. B.,

Plaintiff,

v.

EAGLEWOOD MORTGAGE, LLC;
COUNTRYWIDE BANK, N.A.,

Defendants - Appellees,

MARIA ABREU,

Movant,

Appendix A

and

SETTLEMENT SOLUTIONS; AURORA LOAN SERVICES LLC; LEHMAN MORTGAGE CAPITAL; LEHMAN BROTHERS; KEVIN DECKER; MIKE SWEENEY; DONALD CROWE; MICHAEL A. PERRY,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge. (8:07-cv-02768-PJM)

Submitted: November 2, 2009
Decided: November 30, 2009

Before WILKINSON, NIEMEYER , and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

PER CURIAM:

Jeanne and Charles Biggs ("the Biggses") appeal the district court's order granting summary judgment to Appellees Countrywide Bank FSB and Eaglewood Mortgage, LLC, (collectively "Appellees") on the Biggses' action under the civil RICO statute, 18 U.S.C. § 1964 (2006). On appeal, the Biggses assert that the district court erred in applying a reliance element to their claims of mail fraud; determining the Biggses had

prior knowledge of the possibility of negative amortization; failing to view the facts in the light most favorable to the Biggses; and improperly deciding questions of the Biggses' knowledge and reliance. We affirm.

We review de novo a district court's order granting summary judgment and view the facts in the light most favorable to the nonmoving party. *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Bogart*, 396 F.3d at 555. Summary judgment will be granted unless a reasonable jury could return a verdict for the nonmoving party on the evidence presented. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

I. Reliance

RICO provides a private right of action and treble damages for "[a]ny person injured in his business or property by reason of a violation of section 1962" of the RICO's criminal component. 18 U.S.C. § 1964(c) (2006). Section 1962 contains RICO's criminal prohibitions; pursuant to 18 U.S.C. § 1962(c), it is

> "[U]nlawful for any person employed by or associated with" an enterprise engaged in or affecting interstate or foreign commerce "to conduct or participate, directly or

> indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." The term "racketeering activity" is defined to include a host of so-called predicate acts, including "any act which is indictable under . . . section 1341 (relating to mail fraud)."

Bridge v. Phoenix Bond & Indemnity Co., 128 S. Ct. 2131, 2137-38 (2008) (quoting 18 U.S.C. §§ 1961(1)(B), 1962(c) (2006)). Mail fraud occurs when an individual, having devised a plot to defraud, uses the mail in order to further their plot. 18 U.S.C. § 1341 (2006). "The gravamen of the offense is the scheme to defraud, and any mailing that is incident to an essential part of the scheme satisfies the mailing element, even if the mailing itself contains no false information." *Bridge*, 128 S. Ct. at 2138. Thus, RICO allows for a private civil action to any individual injured through a pattern of conduct constituting mail fraud.

On appeal, the Biggses assert that the district court erred in requiring them to prove reliance on Countrywide's alleged mail fraud. The Biggses contend this requirement contravenes the Supreme Court's recent decision in *Bridge*. This court reviews such questions of statutory interpretation de novo. *See United States v. Pierce*, 278 F.3d 282, 286 (4th Cir. 2002).

In *Bridge*, the Supreme Court held that "no showing of reliance is required to establish that a person has violated § 1962(c) by conducting the affairs of an

enterprise through a pattern of racketeering activity consisting of acts of mail fraud." *Bridge,* 128 S. Ct at 2139. Though the Supreme Court noted that a plaintiff would generally be unable to demonstrate causation without showing at least some form of reliance, "the fact that proof of reliance is often used to prove an element of the plaintiff's cause of action . . . does not transform reliance itself into an element of the cause of action." *Id.* at 2144.

Though the district court was correct in determining that the instant situation was somewhat different from the facts in *Bridge,* it nevertheless erred by finding that "*Bridge* did not eliminate reliance as an element of a RICO claim predicated on mail fraud." In so holding, the district court improperly distinguished *Bridge* from the instant case by citing to footnotes and other dicta in which the Supreme Court expressed its view that it would be challenging to demonstrate proximate cause without also proving some kind of reliance. *See, e.g., Bridge,* 128 S. Ct. at 2143 n.6 ("Of course, a misrepresentation can cause harm only if a recipient of the misrepresentation relies on it), *Id.* at 2144 ("Of course, none of this is to say that a RICO plaintiff who alleges injury by reason of a pattern of mail fraud can prevail without showing that *someone* relied on the defendant's misrepresentations") (internal quotation marks and citations omitted). Based on this language, the district court found that *Bridge's* holding was limited to cases of third-party reliance.

However, contrary to the finding of the district court, such statements do not restrict *Bridge's* holding. Though *Bridge* concerned a plaintiff who had been harmed by a third-party's reliance on the defendant's misrepresentations, we do not read its holding as limited to this particular situation. The Supreme Court explained that, though common law fraud required a showing of reliance, "[n]othing on the face of the relevant statutory provisions imposes such a requirement." *Bridge,* 128 S. Ct. at 2138. Instead, using the mail in furtherance of a scheme to defraud is a predicate act of racketeering under RICO, even if there is no reliance on the misrepresentation. *Id.* If the defendant has engaged in a pattern of such behavior, he will be liable under RICO, without anyone actually relying on a fraudulent misrepresentation. *Id.* Therefore, we agree with the Biggses that *Bridge's* holding eliminates the requirement that a plaintiff prove reliance in order to prove a violation of RICO predicated on mail fraud.

However, we may affirm a district court's grant of summary judgment on any legal basis supported by the record; we need not rely upon the grounds asserted by the district court. *See Bryant v. Bell Atl. Md., Inc.,* 288 F.3d 124, 132 (4th Cir. 2002). Therefore, despite this error by the district court, we affirm the district court's grant of summary judgment to Countrywide, as the Biggses failed to prove, or even allege, any fraudulent behavior on the part of Countrywide or Eaglewood. The Biggses allege three different purportedly fraudulent actions on the part of the Defendants:

Appendix A

> Existing homeowners were re-financed with payment option adjustable rate mortgage loans that were at least one of the following: unsuitable for the homeowner; less suitable than at least one other financing approach available to the homeowner; more costly to the homeowner than at least one other suitable financing approach available to the homeowner with the additional cost inuring to the benefit of the enterprise or a member or members thereof.

In support of these conclusory allegations, the Biggses repeatedly state that the Defendants failed to tell them that "a fixed rate mortgage . . . was more suitable for [the Biggses] than [a] . . . payment option ARM." Additionally, the Biggses contend that the Defendants utilized various agents in order to "cloak the . . . payment option ARM with seeming legitimacy and safety," making various statements to the Biggses about how a payment option ARM would benefit them.

However, despite these allegations, the Biggses still fail to demonstrate, or even allege, that they were misled about any particular loan term. The adjustable rate rider of each payment option ARM explicitly delineated the schedule for changes in the interest rate and the monthly payment amount, as well as the possibility of negative amortization. As noted by the district court, the Biggses were "active and continuous shoppers of mortgage financing" and "possessed obvious and extensive experience with both fixed-rate loans and

ARM loans" as evidenced by the fact that, beginning in 2003, the Biggses refinanced their mortgage five times in a span of four years. This familiarity with multiple loan types, combined with the fact that each loan complained of explicitly put the Biggses on notice of the possibility of negative amortization, supports our conclusion that the district court did not err in granting summary judgment for the Defendants.

II. Other Issues

Next, the Biggses contend that the district court "wrongly construed the 1997 mortgage as negatively amortizing." In effect, the Biggses argue that this improper construction led the district court to incorrectly determine that the Biggses understood the principle of negative amortization. However, as explained above, the possibility of negative amortization was explicitly delineated in the adjustable rate rider to each of the payment option ARMs of which the Biggses now complain. Therefore, regardless of whether the Biggses' 1997 mortgage had the possibility for negative amortization, the Biggses were made aware of this possibility before entering into each of the ARM mortgages with Countrywide.

The Biggses also assert that "the district court erred by [fail]ing to identify reasonable inferences in Homeowner's favor." It appears that the Biggses assign error to the district court's conclusion that they were experienced mortgage shoppers, as well as Countrywide's alleged mischaracterization in its

pleadings of the 2004 loan as having an interest rate of 4.269 percent for the length of the loan. However, as previously explained, the fact that the Biggses refinanced their mortgage five times in a span of four years strongly supports a finding that the Biggses understood the terms of the mortgages, and were not innocent "victims" of a fraud scheme. Additionally, though Countrywide appears to have mischaracterized the 2004 mortgage as having a lifetime interest rate of 4.269 in its memorandum in support of its motion to dismiss, the Biggses fail to demonstrate how this error in the pleadings had any bearing whatsoever on whether the Biggses understood the mortgages into which they entered.* Therefore, these contentions are without merit.

Finally, the Biggses assert that the district court erred in improperly deciding questions of "knowledge and reliance" when considering the Biggses' claims of fraud and negligent misrepresentation, incorrectly relying on "Countrywide's interpretation of what the

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* Moreover, any such error is clearly the product of a clerical error and not evidence of Countrywide's deceit or own misunderstanding of its loans. In the pleadings, Countrywide incorrectly described the loan as having an interest rate of 4.269 percent, when in actuality this was the calculated APR of the loan appearing in the Truth-in-Lending-Disclosure-Statement ("TILDS"). The initial interest rate was 1.750 percent, adjusted monthly. This discrepancy is clearly explained in the "Definition" section of the TILDS, which states that the interest rate found in the rider is but one of several charges included in the APR, which results in an APR higher than the interest rate shown in the rider.

undisputed evidence of record shows." This contention is also without merit. The Biggses' amended complaint is bereft of a single allegation of purposeful misrepresentation or reliance thereon. Moreover, as we have described, all the pertinent information regarding the loans, their adjustable interest rates, and the possibility of negative amortization was disclosed to the Biggses in the form of detailed adjustable rate riders. The Biggses initialed each page of the adjustable rate rider for the first loan indicating their review of it, and the Biggses signed the final page of each of the three riders, each time indicating that they accepted and agreed to the terms delineated in the rider. Accordingly, because the Biggses fail to present any evidence, or even raise any serious possibility, of misrepresentation or their reliance thereon, we find that the district court correctly granted summary judgment as to their claims.

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — SUPPLEMENTAL OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DATED JANUARY 5, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil No. **PJM 07-2768**

JEANNE BIGGS, *et al.*,

Plaintiffs,

v.

EAGLEWOOD MORTGAGE LLC, *et al.*,

Defendants.

SUPPLEMENTAL OPINION

Plaintiffs Jeanne and Charles Biggs ("the Biggs") allege that Defendants Eaglewood Mortgage, LLC and Countrywide Bank N.A.,[1] individually and as co-conspirators, engaged in a mortgage scheme with the intent to defraud them. After Countrywide filed a Motion to Dismiss or, in the Alternative, for Summary Judgment as to all claims, the Biggs filed motions seeking summary judgment in their favor on their

1. Since this litigation began, Countrywide has been taken over by Bank of America. For the sake of convenience, Countrywide will continue to be referred to as "Countrywide."

racketeering and conversion claims. On September 17, 2008, the Court issued an Opinion and Order granting in part and mooting in part Countrywide's Motion to Dismiss; granting in part and mooting in part its Motion for Summary Judgment; and denying the Biggs' Cross-Motions for Summary Judgment. The Biggs have now filed a Motion to Alter/Amendment Judgment under Federal Rule of Civil Procedure 59(e). For the following reasons, the Motion is **DENIED**.

I.

In their Amended Complaint, the Biggs asserted that in 2004, Countrywide, through its agents and/or co-conspirators, made false statements to induce them to execute loan documents converting their 5.25% fixed-rate home mortgage with Chase Manhattan Mortgage Corporation into a payment option adjustable rate mortgage ("ARM") with Countrywide, and that in 2006 Countrywide induced them to refinance through yet another payment option ARM.[2] The Biggs claimed that these payment option ARMs contained various high risk features which were inappropriate for them, an elderly retired couple. They further alleged that, by offering loans with these features, Defendants intended the Biggs' loan principal to increase substantially over time, at which time they would either be in default and subject to foreclosure or, if they could afford the inflated payment, their modest monthly income would be depleted.

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2. A full recitation of the facts of the case is set forth in the Court's prior Opinion. *See Biggs v. Eaglewood Mortgage LLC*, 582 F. Supp. 2d 707, 2008 WL 4702662 (D. Md. 2008).

Against this background, the Biggs submitted that Countrywide was liable to them for compensatory and punitive damages based on several causes of action. The Court, however, granted Countrywide's Motion for Summary Judgment as to Count I, and its Motion to Dismiss as to Counts II, III, IV, V and VI. The Court dismissed Count VII *sua sponte*. Only Count I-Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.* remains and only as applied to Eaglewood Mortgage, LLC.

II.

The Court considers the Biggs' Motion to Alter/Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e).[3] The Biggs allege that the Court improperly granted Countrywide's Motion for Summary Judgment as to Count I based on its mistaken view that the Biggs were required to prove reliance as an element of their claim. They argue that under the Supreme Court's decision in *Bridge v. Phoenix Bond & Indem. Co.*, 128 S. Ct. 2131, 170 L. Ed. 2d 1012 (2008), reliance is no longer a required element in a RICO claim predicated on mail fraud. Therefore, they say, the Court's ruling needs to be amended to comport with *Bridge*. Further, they claim that the Court, in disposing of Counts I, III, IV and V, improperly resolved questions of fact against them in violation of the summary judgment standard requiring resolution of all facts in favor of the non-moving party.

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3. Because the court did not enter judgment in its earlier ruling, the Motion is timely filed.

Countrywide, in response, argues that *Bridge* did not eliminate the reliance element in a RICO case predicated on mail fraud; it simply eliminated first-party reliance requirement in cases where a third party was affected by the fraud. Consequently, Countrywide argues that *Bridge* does not contradict the Court's finding that Countrywide was entitled to summary judgment as to Count I because the Biggs, as a matter of law, failed to prove the necessary element of reliance. As to the remaining counts, Countrywide argues that the Court did not base its Opinion on improper inferences and that the record clearly supports the Court's conclusions.

III.

The Court agrees with Countrywide that *Bridge* did not eliminate reliance as an element of a RICO claim predicated on mail fraud. The Supreme Court was presented with a situation where the plaintiffs themselves had not received or relied upon misrepresentations made by defendants, but had relied on misrepresentations defendants made to others. *See Bridge*, 128 S.Ct. at 2139. What the Court held was that, even though plaintiffs had not themselves relied on the misrepresentations made by defendants, they properly asserted a claim because first-party reliance is not a required element of a RICO claim predicated on mail fraud. *See Id.* at 2145. The Court was careful to note, however, that "none of this is to say that a RICO plaintiff who alleges injury by reason of a pattern of mail fraud can prevail without showing that *someone* relied on the defendant's misrepresentations." *Id.* at 2144 (internal quotations omitted). The Court stressed that a misrepresentation cannot cause harm unless

it is relied upon. *Id.* at 2143, fn 6 ("Of course, a misrepresentation can cause harm only if a recipient of the misrepresentation relies on it.").

The present case is therefore clearly distinguishable from *Bridge*, because here the Biggs claim that Countrywide directly misled them and that they, in fact, relied on those misrepresentations. *See* Amended Complaint at ¶¶ 30, 40, 51, 52, 74, 84 & 130.

Other courts examining this issue since *Bridge* are in accord, holding that where plaintiffs allege their own first-party reliance in a RICO case predicated on mail fraud, reliance must still be proven as an element of the claim. *See e.g. Dungan v. Academy at Ivy Ridge*, No. 06-CV-0908, 2008 U.S. Dist. LEXIS 56757, 2008 WL 2827713 at *3 (N.D.N.Y. July 21, 2008) ("While this Court acknowledges the rule enunciated in *Bridge*, the problem for Plaintiffs is that they do allege that they relied on Defendant's claimed misrepresentations and that it was this first-person reliance that caused them to sustain damages . . . [a]ccordingly, reliance continues to be a predominant issue . . ."); *G&G TIC, LLC v. Alabama Controls, Inc.*, No. 4:07-CV-162, 2008 U.S. Dist. LEXIS 75269, 2008 WL 4457876 at *4 (M.D. Ga. Sept. 29, 2008) (in granting motion to dismiss RICO counts based on mail and wire fraud, the court stated that while *Bridge* eliminated the first party reliance requirement, the plaintiff must still show that "it was injured as a direct result of the fraud" and that "someone relied upon a misrepresentation made by the defendants and that the reliance directly caused harm to the plaintiff.").

This Court previously found, given the undeniable facts in this case, that the Biggs failed to raise a genuine issue of material fact that they relied to their detriment on any representation made by Countrywide. Since *Bridge* did not eliminate the necessity of proving reliance in a situation where parties allege, as part of a RICO case predicated on mail fraud, that they personally relied upon purported misrepresentations, the Court properly granted Countrywide's Motion for Summary Judgment as to this issue.

IV.

As to the remaining arguments that the Court improperly relied on factual inferences in resolving Counts I, III, IV and V in favor of Countrywide, the Biggs fail to point to any mistake or new information which would necessitate amending the Court's prior Order. The Court is satisfied that its rationale in ruling upon those Counts remains intact.

V.

For the foregoing reasons, the Court **DENIES** the Biggs' Motion to Alter/Amend Judgment.

A separate order will **ISSUE**.

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

January 5, 2009

APPENDIX C — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND FILED SEPTEMBER 18, 2008

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. PJM 07-2768

JEANNE BIGGS, *et al.*,

Plaintiffs,

v.

EAGLEWOOD MORTGAGE LLC, *et al.*,

Defendants.

OPINION

Plaintiffs Jeanne and Charles Biggs ("the Biggs") allege that Defendants Eaglewood Mortgage, LLC and Countrywide Bank N.A.,[1] individually and as co-conspirators, engaged in a mortgage scheme with the intent to defraud them. Countrywide has filed a Motion to Dismiss or, in the Alternative, for Summary Judgment as to all claims. In addition to opposing Countrywide's Motions, the Biggs have filed motions seeking summary judgment in their favor on their racketeering and

1. Since this litigation began, Countrywide has been taken over by Bank of America. For the sake of convenience, Countrywide will continue to be referred to as "Countrywide."

conversion claims.[2] For the following reasons, Countrywide's Motion to Dismiss is **GRANTED IN PART** and **MOOTED IN PART**; its Motion for Summary Judgment is **GRANTED IN PART** and **MOOTED IN PART**; and the Biggs' Cross-Motions for Summary Judgment are **DENIED**.

I.

In their Amended Complaint, the Biggs assert that in 2004 Countrywide, through its agents and/or co-conspirators, made false statements to induce them to execute loan documents converting their 5.25% fixed-rate home mortgage with Chase Manhattan Mortgage Corporation into a payment option adjustable rate mortgage ("ARM")[3] with Countrywide, and in 2006 induced them to refinance through yet another payment

2. After Countrywide's Motion was fully briefed and argued, the Biggs filed the motions requesting judgment in their favor on the racketeering and conversion claims. Such requests should have been made in the form of Cross-Motions for Summary Judgment at the time the Biggs filed their opposition to Countrywide's Motion. The Court, in any case, will refer to the Biggs' requests as Cross-Motions for Summary Judgment as to the racketeering and conversion claims.

3. A payment-option adjustable rate mortgage — also known as a flexible-payment ARM, pay-option ARM, option ARM, or PO — is considered nontraditional in that it allows the borrower to choose from a number of payment options. For example, the borrower may choose either a minimum payment option each month based on an introductory interest rate, an IO [interest only] (Cont'd)

option ARM with Countrywide.[4] The Biggs claim that these payment option ARMs contained various high risk

(Cont'd)

> payment option based on the fully indexed interest rate, or a fully amortizing principal-and-interest payment option based on a 15- or 30 year loan term plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resolution [*sic* — "resulting"?] in negative amortization. The IO option avoids negative amortization but does not allow principal amortization. After a certain number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is refigured to require payments that will fully amortize the outstanding balance over the remaining loan term.

Glossary, Community Investments Online, Vol. 18 No. 3 (December 2006), http://www.frbsf.org/publications/community/investments/0612/glossary.pdf, (last visited Sept. 16, 2008).

4. The Biggs also allege that in 2007, as part of Defendants' ongoing "scheme," they were induced to agree to a third payment option ARM, this time with American Home Mortgage or, in the alternative, that they were forced to refinance and accept the American Home Mortgage ARM because of the unfavorable transactions with Countrywide in 2004 and 2006. Countrywide received a pay-off of its 2006 payment option ARM out of the proceeds of the 2007 ARM with American Home Mortgage.

American Home Mortgage, which filed for bankruptcy before this suit was filed, is not a party to the suit.

The Biggs' claim as to its 2007 ARM with American Home Mortgage (AHM) is beyond any relief the Court could award as the case presently stands, given that AHM is not a party to this

(Cont'd)

features, including an initial "teaser" interest rate, abruptly changing interest rates, negative amortization, and prepayment penalties, all of which were inappropriate for the Biggs, an elderly retired couple, Charles Biggs being 82 years of age and Jeanne Biggs 79 years of age as of the date suit was filed. The Biggs further allege that, by offering loans with these features, Defendants intended the Biggs' loan principal to increase substantially over time until the adjustable rate would kick in and their required monthly payment would increase substantially, at which time the Biggs would either be in default and be subject to foreclosure or, if they could afford the inflated payment, their modest monthly income would be depleted. According to the Biggs, any chance of refinancing the increased principal balance and prepayment penalties into a fixed-rate mortgage at that juncture would most likely prove impossible, since the requisite 80% loan-to-value ratio for a fixed rate loan could not then be met.

Against this background, the Biggs submit that Countrywide is liable to them for compensatory and

(Cont'd)

suit. Among their prayers for relief, the Biggs ask the Court to hold the AHM mortgage unenforceable. But even if AHM were shown to be an agent or co-conspirator of Countrywide — and there is absolutely no evidence other than pure assertion by the Biggs that this is so apart from the fact that AHM and Countrywide have apparently done business together on several occasions — AHM would certainly be a necessary party to this litigation before the Court could make any declaration as to the enforceability *vel non* of the AHM loan. The fact of AHM's absence from the suit alone makes any consideration of that issue inappropriate.

punitive damages based on one or more of the following causes of action: Count I — Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*; Count II — Conversion; Count III — Conspiracy; Count IV — Fraud or Fraudulent Misrepresentation; Count V — Negligent Misrepresentation; Count VI — Negligence; and Count VII — Punitive Damages.[5]

II.

A. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). The court must consider all well-pled allegations in the complaint as true and must construe all factual allegations in the light most favorable to the plaintiff. *See Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783 (4th Cir. 1999). The court, however, need not accept conclusory factual allegations devoid of any reference to an actual event, *United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979),

5. There is no separate cause of action for punitive damages apart from an underlying cause of action upon which punitive damages can be grounded. This is true both as a matter of federal law, *see e.g. Green v. H & R Block*, 981 F. Supp. 951 (D. Md. 1997), and state law, *e.g. Exxon Corp. v. Yarema*, 69 Md. App. 124, 516 A.2d 990 (Md. Ct. Spec. App. 1986). Although Countrywide has not raised the issue in its Motion, the Court will *sua sponte* dismiss Count VII. Since, as will be seen, no underlying causes of action survive Countrywide's Motion, it would be academic to discuss the re-pleadability of punitive damages.

unsupported legal allegations, *Revene v. Charles County Comm'rs*, 882 F.2d 870, 873 (4th Cir. 1989), or legal conclusions couched as factual allegations, *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and the facts must suffice to "state a claim to relief that is plausible on its face." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965, 1974, 167 L. Ed. 2d 929 (2007).

B. Assuming a cognizable cause of action is stated, a party will be entitled to summary judgment if the evidence in the record "show[s] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The court is obligated to view the facts and inferences drawn from the facts in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). "'A mere scintilla of evidence is not enough to create a fact issue.'" *Barwick v. Celotex Corp.*, 736 F.2d 946, 958-59 (4th Cir. 1984) (quoting *Seago v. N.C. Theatres, Inc.*, 42 F.R.D. 627, 640 (E.D. N.C. 1966), *aff'd*, 388 F.2d 987 (4th Cir. 1967)). There must be "sufficient evidence favoring the nonmoving party for a jury to

return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (citations omitted). A motion for summary judgment may be made by a defending party with or without supporting affidavits and documents, Fed. R. Civ. P. 56(b), but when the motion is properly made and supported, the plaintiff may not merely rely on allegations or denials in his or her own pleadings; he or she must respond with affidavits or other evidence. *Id.* at (e)(2).

III.

In Count I of the Amended Complaint, the Biggs assert a claim under the federal RICO statute, which establishes civil liability on the part of those who engage in a pattern of racketeering activities causing harm to another's business or property. *See* 18 U.S.C. §§ 1962, 1964. Violation of § 18 U.S.C. 1962 requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *See Sedima, S.P.R.L. v. Imrex Co. Inc.*, 473 U.S. 479, 496, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985). Under the statute, "a pattern of racketeering activity" requires, at a minimum, two predicate acts within a ten year period, while "racketeering activity" is defined in terms of a number of specific crimes, one of which is mail fraud. *See* 18 U.S.C. §§ 1961(1) and (5).

The Biggs allege that in July 2004 Countrywide formed an enterprise with Mortgage Equity Lenders

and Equitable Settlement Services, LLC, which later included American Home Mortgage, Eaglewood Mortgage, LLC, and Settlement Solutions, to engage in a fraudulent mortgage scheme, and that Countrywide, through its agents or co-conspirators, used the United States Postal Service to transmit loan coupons, thank you cards, loan documents, executed agreements, and other mail in the course of and for the purpose of executing the alleged fraudulent scheme. This scheme allegedly occurred over a number of years and included placement of the Biggs into payment option ARMs in 2004 and 2006 with Countrywide. The Biggs submit that Countrywide has engaged in similar conduct in various parts of the country, fraudulently placing other homeowners into payment option ARMs with high risk features for which those homeowners were not suited.

Countrywide argues that because payment option ARMs are not inherently illegal, absent evidence of other fraudulent conduct the Biggs' mortgage transactions cannot constitute "racketeering activity" within the meaning of RICO. In any case, says Countrywide, the Biggs were hardly naive as to the various mortgage options available to them, since they have held twelve mortgages with at least ten different lenders over the years and, with respect to the 2006 transaction, as evidenced by the high number of credit inquiries on their credit report, they were in fact extraordinarily active shoppers for the best refinancing option available. Countrywide also argues that the Biggs' loan documents clearly identified the terms of

the 2006 payment option ARM, including the so-called "risky" features with which the Biggs now take issue and that the documents it provided were in full compliance with the disclosure requirements of the federal Truth in Lending Act. 15 U.S.C. § 1601 *et seq.* In sum, says Countrywide, the mortgage transaction documents evidence no fraud and the Biggs have otherwise failed to proffer any other evidence of fraudulent representations attributable to it.

The first question in connection with Count I, taking their pleaded facts as true, is whether the Biggs have stated a RICO claim, *i.e.* is the count is subject to dismissal under Fed. R. Civ. P. 12(b)(6)? The issue, of course, is not whether the use of the U.S. mails can result in "racketeering activity" under RICO — certainly it can — the critical inquiry is whether the mails have been used to perpetrate a fraud.

The Biggs' theory of fraud is vague at best. Combing through the Amended Complaint and reviewing the transcript of oral argument, it appears that the Biggs are contending variously that payment option ARMS are fraudulent in general, and/or that the particular payment option ARMs in this case were fraudulent, and/or that such ARMS are fraudulent in general as to elderly persons of modest means, and/or that they were fraudulent as to the elderly Plaintiffs in this case. Whatever the precise theory, the illegality purportedly lies in the fact that payment option ARMS are part of a hard-sell on the part of banks, the high risk features of payment option ARMS are difficult to understand, and

over time — in marked contrast to fixed rate mortgages — they are inordinately costly. The Biggs suggest that the difficulty in understanding payment option ARMs is compounded by the fact that in this case their loan disclosure documents appear to contain conflicting statements of precisely what payments were due from them and when.

Countrywide submits that payment option ARMs are not inherently illegal or wrongful, hence simply providing them cannot constitute a "racketeering activity" within the meaning of RICO. No case, according to Countrywide, has so held. *See e.g. Rosenberg v. Wash. Mut. Bank*, 369 N.J. Super. 456, 849 A.2d 566, 573 (N.J. Super. Ct. App. Div. 2004) (finding that language of mortgage documents pertaining to a payment option ARM that included negative amortization was "complex, but not indecipherably so," and that "there was nothing misleading or nondisclosed on the loan statement."); *Cavin v. Home Loan Center, Inc.*, 469 F.Supp.2d 561 (N.D. Ill. 2007) (finding in the context of pre-approved mortgage offers that low teaser rates, pay options and negative amortization features were not deceptive). On the other hand, the Court notes that the Attorneys General of California and Florida have filed actions against Countrywide containing allegations not unlike those in the suit at bar, including that certain of Countrywide's lending practices have been designed to maximize company profits and entice borrowers with "teaser rates" while misrepresenting the substantially larger payments that come due later. *See e.g.* Complaint, *The People of the State of Illinois v. Countrywide Fin.*

Corp., et al, No. 08-CH-22994 (Ill. Cir. Ct. Cook County June 25, 2008), in which the Attorney General for the State of Illinois alleges that from at least the year 2000 until the present Countrywide has aggressively marketed and offered reduced documentation loans and adjustable rate products including those with high risk features such as an initial "teaser" rate, prepayment penalties, and negative amortization and that Countrywide has enticed borrowers into loans with such features by failing to make clear and conspicuous disclosures of the products' risks. *See also* Martha Neil, *Another AG Sues Countrywide*, ABA Journal, July 1, 2008, http://www.abajournal.com/news/another_ag_sues_countrywide (last visited July 2, 2008).

The foregoing actions, however, appear to have been brought under state consumer protection laws and not the federal RICO statute which, as Countrywide points out, is not a cause of action to be pled lightly. As the Fourth Circuit has "repeatedly noted, RICO actions require a continuous pattern of serious criminal activity: "RICO treatment is reserved for conduct 'whose scope and persistence pose a special threat to social well-being.'" *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d 543, 551 (4th Cir. 2001), quoting *Menasco, Inc. v. Wasserman*, 886 F.2d 681, 684 (4th Cir. 1989). RICO was not designed for, and cannot be applied to, "ordinary claims of fraud." *Int'l Data Bank, LTD v. Zepkin*, 812 F.2d 149, 155 (4th Cir. 1987). *See also Market Products Mgmt, LLC v. Healthandbeautydirect.com, Inc.*, 333 F. Supp. 2d 418, 425 (D. Md. 2004), quoting *Al-Abood v. El-Shamari*, 217 F.3d 225, 238 (4th Cir. 2000).

(The "Fourth Circuit has been particularly cautious 'about basing a RICO claim on predicate acts of mail and wire fraud. . .'").

The Court agrees with Countrywide that fashioning a RICO claim out of the provision of payment option ARMS — whether to homeowners in general or to elderly homeowners of modest means in general or to the Biggs in particular — is highly problematic. But whether or not payment option ARMS can be deemed misleading in general or in specific cases and even assuming that a continuous pattern of misrepresentation relative to payment option ARMS on the part of Countrywide could be demonstrated, the Biggs' case clearly founders on the element of reliance. *See Chisolm v. TranSouth Fin. Corp.*., 95 F.3d 331, 337 (4th Cir. 1996) (For civil RICO claim, "plaintiff must have justifiably relied, to his detriment, on the defendant's material misrepresentation"). Despite their protestations to the contrary, the Biggs cannot show that they justifiably or reasonably relied on any representation of Countrywide to their detriment.

The Biggs characterize themselves as elderly borrowers of modest means who, on the basis of high pressure sales tactics by Countrywide or its minions, were induced to leave their fixed rate mortgage with another lender and refinance with Countrywide, becoming enmeshed in not one, but two payment option ARMs. They say this happened first in 2004, then again in 2006. But in support of its Motion for Summary Judgment, Countrywide has produced unrefuted

evidence of the Biggs' obvious sophistication in the matter of residential loans and ARMS in particular. Countrywide has demonstrated as a matter of law that the Biggs did not rely on any allegedly misleading representations about Countrywide's payment option ARMs.

Thus, Countrywide points out without contradiction that over the past 28 years the Biggs have refinanced their home mortgage no less than 12 times with at least 10 different lenders. They obtained their first ARM in 1997 with Baltimore American Mortgage Corporation. The initial annual interest rate for that loan was 7.65%, subject to change in two years, tied to an index, with 6.990% to be added to the then current index to reach an adjusted interest rate. The maximum interest rate would be 10.65%. In 2003, the Biggs refinanced by obtaining a fixed rate (5.25%) 30 year mortgage with Chase Manhattan Bank, cashing out some $ 92,000 after paying off their existing loan balance. Less than one year later, in July 2004, the Biggs moved to their first ARM with Countrywide, taking out a $299,700 30-year mortgage. The initial interest rate was 1.75%, subject to adjustment as of October 1, 2004, tied to an index, with 2.75% to be added to the then current index, resulting in a new adjusted rate. The maximum interest rate would be 9.95%. The Biggs were given the option, on the payment change date, of making a monthly payment that would fully amortize unpaid principal at a slightly enhanced interest rate or a more limited payment, but in any case the note made clear that any unpaid monthly interest would be added to unpaid

principal, *i.e.* there could be negative amortization. After five payment change dates, full monthly payments would be due.

Next came a loan transaction that the Biggs totally fail to discuss in their pleadings, though they do not deny it. In July 2006, after two years on the first Countrywide ARM loan and before being "induced" to refinance a second ARM loan with Countrywide, the Biggs entered into a 30 year fixed rate (5.25%) mortgage with Suntrust Bank, cashing out (or, more precisely, applying to credit card debt) over $35,000. Then, less than 2 months later, in September 2006, Jeanne Biggs (but not Charles Biggs)[6] entered into their second ARM loan with Countrywide, admitting in the process that she had been shopping extensively among several prospective lenders for the most advantageous loan terms. The loan from Countrywide was for $465,000 which, according to the HUD-1 settlement sheet, netted the Biggs over $111,000. The term of the loan was 30 years, the initial annual interest rate was 2%, with an interest rate change date of November 1, 2006, tied to an index, and 3.575% to be added to the index to arrive at the adjusted rate. The maximum interest rate would never be greater than 9.95%. Unpaid monthly interest would be added to unpaid principal. The note gave the Biggs different payment options: interest only, fully amortized payments over the 30 year term, or fully amortized payments over a 15 year term. Unpaid interest would be added to principal. After 10 payment change

6. Charles Biggs did, however, sign the Deed of Trust.

dates, the minimum monthly payment would be at the fully amortized payment rate. From what appears in the record, there was no penalty due if the loan were prepaid.

This is the undisputed factual basis upon which the Biggs attempt to stake their RICO claim, specifically the claim that they were misled as to their interest obligations under the payment option ARMs, and that they were placed in loans not suitable to their ages or station in life.[7] The Court rejects the Biggs' RICO claim as a matter of law. However aggressive Countrywide may have been in promoting its ARMs around the country in recent years, the Biggs simply cannot be considered to have relied on any of Countrywide's representations to their detriment. The undeniable fact is that at all relevant times, the Biggs were active and

---

7. The Biggs also appear to claim that certain oral representations made by personnel of Eaglewood, Countrywide's "business partner," were misleading, *e.g.* "if the interest rate increases, you could refinance practically without charge" or "having a big principal balance favors you," or that "we (Eaglewood, *et al.*) will take care of anything that might come up regarding the refinancing." However, a mere statement of intention or of opinion or prophecy is not a promise and the mere expression of an intention or willingness to do something does not constitute a promise or give rise to contractual liability unless made with promissory intent. S. Williston, A Treatise on the Law of Contracts, § 1.2 (4th ed. 2007). Moreover, in connection with the 2006 Countrywide loan, Jeanne Biggs, the sole borrower, signed a document in which she expressly affirmed that no oral representations or promises had been made to her.

continuous shoppers of mortgage financing and that they possessed obvious and extensive experience with both fixed-rate loans and ARM loans. They also received substantial benefits in connection with the two Countrywide ARMs they now complain of, over $ 111,000 on the second one alone. They clearly knew, based on the 1997 ARM with Baltimore American Mortgage, that an ARM meant that the interest rate on the loan would be tied to an index and would be subject to an upward adjustment. They also knew from the 1997 ARM that unpaid interest would be added to unpaid principal, the obvious result being negative amortization. They knew that the interest rates on the ARMs were subject to a cap.[8] When fixed-rate mortgages were available, the Biggs took advantage of them. When ARMs offered better advantages, they opted for the ARMs; indeed, between their two ARMs with Countrywide, the Biggs held a fixed rate mortgage with Suntrust Bank. The fact that Countrywide's second ARM, as opposed to the first, may have offered different payment options makes little

---

8. The following language appears in bold-face and in all capital letters at the top of the 2006 Adjustable Rate Note:

> THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

difference. The Biggs could easily have chosen as their payment option in connection with the 2006 ARM the same payment option available under the 2004 ARM or they could have opted for the fully amortizing principal and interest rate based on a 30-year loan term, which is what they presumably had with the fixed rate Suntrust loan they were supposedly induced to leave. The suggestion, therefore, that Countrywide somehow misled them is simply untenable, whatever duty lenders in some circumstances may be found to have with respect to ARMs.

Finally, any suggestion that Countrywide may have misrepresented the interest payments due from the Biggs under the 2006 ARM is flatly contradicted by the record. As Countrywide points out, the interest rates shown in the initial loan documents reflect the initial interest rates of the loan. Because the interest rate, by definition, was subject to adjustment over time depending on the index, the changing rates over the life of the loan could not be stated with any certainty, though to be sure a cap on the interest rate was stated. Similarly, the annual percentage rate set forth in the Truth in Lending Disclosure Statement provided to the Biggs, consistent with Regulation Z of Title 12 of the Code of Federal Regulations, 12 C.F.R. § 226.17(c), was properly based on the initial interest rate without adjustments.[9]

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9. The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in

(Cont'd)

In sum, viewing the matter through the lens of summary judgment, the Biggs have not raised a genuine issue of material fact that they relied to their detriment on any representation on the part of Countrywide — whatever problems of understanding other borrowers may have with payment option ARMs.

Countrywide's Motion for Summary Judgment as to Count I is **GRANTED** and the Biggs' Cross-Motion as to this Count is **DENIED**.

IV.

In Count II, the Biggs allege that Countrywide took possession of funds belonging to them and converted those funds to its own use by disbursing monies from the Biggs' mortgage loans to itself and other parties.

While the Biggs seek monetary damages, they are not asking for the return of specific funds that Countrywide has been holding separate and apart. Inasmuch as money in general is not subject to a claim of conversion, this claim fails as a matter of law. *See, e.g., Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 841 A.2d 828, 834, n.3 (Md. 2004)

(Cont'd)

> effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase.

12 C.F.R. Pt. 226, Supp. I.17(c)(1)(8) (rev. Jan. 2007)

("As a general rule, money, i.e., currency, is not subject to a claim of conversion unless the plaintiff seeks to recover specific segregated or identifiable funds").

Countrywide's Motion to Dismiss as to Count II is **GRANTED** and the Biggs' Cross-Motion for Summary Judgment as to Count II is **DENIED**.

V.

In Count III, the Biggs allege that Countrywide conspired with others to make money by putting homeowners into payment option ARMS with risky features from which more value could be extracted for the conspirators' own use, as opposed to leaving homeowners in their current mortgages. A civil conspiracy is a combination of two or more persons by agreement or understanding to accomplish an unlawful or tortious act or to use unlawful means to accomplish a lawful act and actual legal damage to the plaintiff. *Lloyd v. General Motors Corp.*, 397 Md. 108, 916 A.2d 257 (Md. 2007). Conspiracy, however, is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff. *NRT Mid-Atlantic, Inc. v. Innovative Props, Inc.*, 144 Md. App. 263, 797 A.2d 824, 838 (Md. 2002).

Because, as will be seen hereinafter, no separate claim of tort survives Countrywide's motion, the claim of conspiracy is subject to dismissal.

Accordingly, Countrywide's Motion to Dismiss Count III is **GRANTED**.

Appendix C

VI.

In Count IV, the Biggs assert a common law claim in fraud, viz. that Countrywide made fraudulent representations in connection with their loan transactions which the Biggs reasonably relied upon to their detriment.

As with their RICO claim, the Biggs submit that, in providing the 2004 ARM and 2006 ARM papers to them to execute, Countrywide in effect made representations that the 2004 ARM and 2006 ARMs were appropriate for senior citizens of modest means on a fixed pension, which representation was false. They also assert that the conduct and omissions of Eaglewood and its employees Sweeney and Crowe are attributable to Countrywide because Countrywide held out Eaglewood in writing as its partner.

Reprising its response to the RICO claim, Countrywide argues that it had no duty to place the Biggs in a loan most "suitable" to their age and financial condition. A lender, says Countrywide, makes no representations of "appropriateness" by agreeing to extend a loan to a borrower. Moreover, even if presentation of loan documents by Countrywide could be construed as a representation, that sort of representation cannot form the basis of fraud in Maryland as a matter of law. *See Alleco v. Weinberg Found. Inc.*, 340 Md. 176, 665 A.2d 1038, 1048-49 (Md. 1995) ("Acceptance of the plaintiffs' 'implied misrepresentation' theory would extend the scope of a

tort action for fraud or deceit beyond that recognized in our cases or, to the best of our knowledge, in cases elsewhere."). Finally, even if the Biggs could prove that Countrywide made a misrepresentation of material fact to them with respect to the 2006 loan, says Countrywide, they cannot prove reasonable reliance. Whereas the Biggs may not have understood the nuances of a pay option ARM prior to 2004, they gained that knowledge by entering into the 2004 loan agreement and by receiving the monthly mortgage statements reflecting the adjustable rates. The Biggs cannot, therefore, claim the same level of ignorance when they again entered into a second payment option ARM in 2006.

The Court agrees that the Biggs have failed to state a cause of action in fraud for the same reason they have failed to state a RICO claim. As a matter of irrefutable fact, they are unable to show that they reasonably relied on anything Countrywide or its supposed confederates might have said.

Countrywide's Motion to Dismiss Count IV is **GRANTED**.

VII.

In Count V, the Biggs claim that Countrywide made unspecified negligent misrepresentations that are actionable. Countryside says for the same reasons that the Biggs' fraud claim fails, their negligent misrepresentation claim also fails, citing *Cooper v. Berkshire Life Ins. Co.*, 148 Md. App. 41, 810 A.2d 1045

(2002) (identifying reasonable reliance and incurring of damages caused by such as two elements of negligent misrepresentation). The Court agrees.

To recover damages for negligent misrepresentation, the plaintiff must prove that:

1) the defendant, owing the plaintiff a duty of care, negligently misrepresented a material fact;

2) the defendant intended that the plaintiff would act in reliance upon the misrepresentation;

3) the defendant knew the plaintiff probably would rely on the misrepresentation, which if false would cause damages to the plaintiff;

4) the plaintiff justifiably acted in reliance on the misrepresentation; and

5) the plaintiff suffered damages as a result of the reliance on the misrepresentation.

Lloyd v. Gen. Motors Corp., 397 Md. 108, 916 A.2d 257, 273 (Md. 2007).

The Court finds that the same deficiency that characterizes the Biggs' claims for RICO violations and for fraudulent misrepresentation exists as to the

negligent misrepresentation claim. They cannot be heard to say that they relied on any such representations.

Countrywide's Motion to Dismiss Count V is **GRANTED**.

VIII.

In Count VI, the Biggs assert that Countrywide owed them a duty of care in processing their mortgage loan application and that Countrywide breached that duty, by putting them into a payment option ARM, the high risk features of which were not suitable for borrowers of their age and station. The Biggs rely primarily on *Jacques v. First Nat'l Bank of Md.*, 307 Md. 527, 515 A.2d 756, 762 (Md. 1986) ("[I]mplicit in the undertaking of the Bank to process the loan application is the agreement to do so with reasonable care.").

Countrywide finds *Jacques* to be inapposite; it does not, says Countrywide, establish the duty claimed by the Biggs. In *Jacques*, the bank refused to lend the full amount of the loan requested by the borrower under terms it had agreed to in the loan application, despite the fact that the bank knew that the borrower would be forced to proceed to settlement on his underlying purchase contract, regardless of how much money the bank agreed to lend. *Id.* at 529-30. *See also Silver Hill Station Ltd P'ship v. HSA/Wexford Bancgroup, LLC*, 158 F. Supp. 2d 631, 640 (D. Md. 2001) (limiting Jacques and holding that "[t]he Court therefore agrees with

Judges Ramsey and Smalkin that a lender in Maryland owes no duty in tort to reasonably process a loan, absent extraordinary risk or particular vulnerability or dependency on the part of the borrower."). Here Countrywide provided the full amount requested by the Biggs under the precise terms agreed to by them.

The Court agrees that *Jacques* provides no support for the Biggs' claim under the circumstances of this case. No authority stands for the proposition that banks owe a duty to elderly borrowers to place them in a more "suitable" loan, even while the borrowers are actively seeking and ultimately agree to some other, more burdensome loan. There is, to be sure, the possibility that mental impairment on the part of a contracting party, might permit the disavowal of a contract. That is a well-established part of the law. *See* Restatement (Second) Contracts, § 15 (1981). Presumably, insofar as specific elderly mortgagors might suffer from such mental limitations, it is arguable that they may be able to state a cause of action against an overreaching mortgagee, the precise parameters of which — particularly as to remedy — will have to await the development of a specific record in a given case. Here, however, there is no indication that the Biggs were suffering from mental disabilities that impaired their ability to enter into a loan contract. Quite the contrary, as the Court has noted; they were active, knowledgeable shoppers and beneficiaries of multiple mortgages, including ARMs. They were not placed into a loan transaction or transactions they could not understand. They were in a fixed rate mortgage with another lender

in between the two Countrywide ARMs they now complain of and could have stayed with that loan or sought another fixed rate loan instead of a second ARM. From all that appears, the Biggs actively sought the low teaser rate of the second Countrywide ARM. Given their prior experience with ARMs, they could hardly claim surprise when the rate quickly ratcheted up according to the terms of the loan. And whatever other payment options the second ARM offered, the Biggs clearly had the option of paying off the loan at the conventional 30 year full amortizable rate, with a cap on the interest rate of 9.95%. It may be that they were unable to afford those payments. But that is not something for which Countrywide can be faulted.

Countrywide's Motion to Dismiss Count VI is **GRANTED**.

IX.

A separate Order will be **ENTERED** implementing this decision.

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

September 17, 2008

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DENYING PETITION FOR REHEARING FILED JANUARY 26, 2010

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1545
(8:07-cv-02768-PJM)

JEANNE BIGGS; CHARLES BIGGS,

Plaintiffs - Appellants

and

BORROWER NO. 0124854613, Mr. and Mrs. B.,

Plaintiff

v.

EAGLEWOOD MORTGAGE, LLC;
COUNTRYWIDE BANK, N.A.,

Defendants - Appellees

MARIA ABREU,

Movant

and

Appendix D

SETTLEMENT SOLUTIONS; AURORA LOAN SERVICES LLC; LEHMAN MORTGAGE CAPITAL; LEHMAN BROTHERS; KEVIN DECKER; MIKE SWEENEY; DONALD CROWE; MICHAEL A. PERRY,

Defendants

ORDER

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Neimeyer and Judge Duncan.

For the Court
/s/ Patricia S. Connor, Clerk

RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED

091194 MAR 31 2010

OFFICE OF THE CLERK

No. 09-

IN THE

Supreme Court of the United States

JEANNE BIGGS and CHARLES BIGGS,

Petitioners,

v.

EAGLEWOOD MORTGAGE, LLC and
COUNTRYWIDE BANK, N.A.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX

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SA-1

@7958' 294'

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
SVS #3119 DOCUMENT PROCESSING
P.O. Box 6423
Van Nuys, CA 91410-6423

Equitable Settlement
131 Industry Ln Ste I
Forest Hill MD 21050
410 838 1212

[Space Above This Line For Recording Data]

0000568421907004
[Doc ID #]

DEED OF TRUST

MIN 1001337-0008123034

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JULY 01, 2004 , together with all Riders to this document.

(B) "Borrower" is
CHARLES E BIGGS, AND, AND JEANNE G BIGGS

MONTGOMERY COUNTY, MD
APPROVED BY
AUG - 1 2004
$ 1,100.00 RECORDATION TAX PAID
$ N/A TRANSFER TAX PAID

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
Countrywide Bank, A Division Of Treasury Bank, N.A.
Lender is a NATL. ASSN.
organized and existing under the laws of THE UNITED STATES
Lender's address is
P.O. Box 660694, Dallas, TX 75266-0694

(D) "Trustee" is
CTC REAL ESTATE SERVICES
400 COUNTRYWIDE WAY, SV-88, SIMI VALLEY, CA 93065

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888)-679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 01, 2004 . The Note states that Borrower owes Lender
TWO HUNDRED NINETY NINE THOUSAND SEVEN HUNDRED and 00/100

Dollars (U.S. $ 299,700.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2034 .

MARYLAND-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Page 1 of 15 Form 3029 1/01

VMP MORTGAGE FORMS (800)521-7291

CDMYMA

20
20
14

2304

0008421907004

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) MSA CE 63-2912, Book MCR 21958, p. 0294, Printed 12/20/2007 Online 09/13/2004

BEST AVAILABLE COPY

SA-2

07958 295

DOC ID #: 00009568492190104

(Q) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(R) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(S) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[A] Other(s) [specify]

(T) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(U) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(V) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(W) "Escrow Items" means those items that are described in Section 3.

(X) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(Y) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(Z) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(AA) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(BB) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of MONTGOMERY
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

LOT NUMBERED NINE (9) IN BLOCK NUMBERED EIGHT (8) IN THE SUBDIVISION KNOWN AS "BLOCK 7 AND PARTS OF BLOCKS 1 AND 8 PARKWOOD", AS PER PLAT OF SAID SUBDIVISION RECORDED IN PLAT BOOK 39, PLAT 2766, ONE OF THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.

C.E. Boyd

Initials: JGS

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 65-27972] Book MCR 27152 p. 0289 Printed 12/10/2007 Online 08/13/2004

SA-3

@1958: 296

DOC ID #: 00005681021907004

Parcel ID Number: Which currently has the address of

10109 ASHWOOD DR., KENSINGTON

[Street/City]

Maryland 20895 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or

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any sums payable by Borrower to Lender in lieu of the payment of mortgage insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such

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determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agents may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

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6. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

7. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 7, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 7.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

8. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 8 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(e) Any such agreement will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

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13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 60-7957] Book MDR 2798, p. 0[illegible], Printed 12/15/2021 [illegible]
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DOC ID #: 0000568492190T004

which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall mail a copy of notice of sale to Borrower in the manner prescribed by Applicable Law. Trustee shall give notice of sale by public advertisement and by such other means as required by Applicable Law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 3.000 % of the gross sale price and reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Borrower, in accordance with Title 14, Chapter 200 of the Maryland Rules of Procedure, does hereby declare and consent to the passage of a decree to sell the Property in one or more parcels by the equity court having jurisdiction for the sale of the Property, and consents to the granting to any trustee appointed by the court to decree of all the rights, powers and remedies granted to the Trustee in this Security Instrument together with any and all rights, powers and remedies granted by the decree. Neither the consent to decree nor the power of sale granted in this Section 22 shall be exhausted in the event the proceeding is dismissed before the payment in full of all sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee, shall release this Security Instrument and mark the Note "paid" and return the Note to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Possession of the Property. Borrower shall have possession of the Property until Lender has given Borrower notice of default pursuant to Section 22 of this Security Instrument.

C.E.A.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) 5454,28 03:37:15 PM Book MDR 37838, Page 0303 Receipt 17097807 Online
MDR1 MDR

SA-11

07958: 304

DOC ID #: 60805684921567004

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witness:

Charles E. Biggs, Jr. (Seal)
CHARLES E. BIGGS -Borrower

Jessie O. Biggs (Seal)
JESSIE O. BIGGS -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

KEY TO MER I COUNTY CIRCUIT COURT (Land Records) FISA OLS (v1.01) Split MOR (7058.e.3E) Printed 12/18/2007 3:04pm OLS (v1.00)

SA-12

@7958 305

STATE OF MARYLAND, HARFORD DOC ID #: 0008364493210708

I Hereby Certify, That on this 8 day of JULY 2009, before me, the subscriber, a Notary Public of the State of Maryland, in and for the COUNTY OF HARFORD personally appeared CHARLES E. BIGGS JR. and JEANNE A. BIGGS

known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge that he/she/they executed the same for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My Commission Expires:

ROBERT E. MOORE NOTARY PUBLIC MY COMMISSION EXPIRES 3 JULY 09 HARFORD COUNTY MD

Notary Public

STATE OF MARYLAND, HARFORD

I Hereby Certify, That on this 8 day of JULY 2009, before me, the subscriber, a Notary Public of the State of MARYLAND and for the COUNTY OF HARFORD personally appeared

MELISSA K. HYLE

the agent of the party named by the foregoing Deed of Trust, and made oath in due form of law that the consideration recited in said Deed of Trust is true and bona fide as therein set forth and that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party or parties named by the Deed of Trust as the Borrower or to the person responsible for disbursement of funds at the closing consumation or their respective agent at a time not later than the execution and delivery by the Borrower of this Deed of Trust, and also made oath that he is the agent of the party or parties secured and is duly authorized to make this affidavit.

AS WITNESS my hand and notarial seal.

My Commission Expires:

ROBERT E. MOORE NOTARY PUBLIC MY COMMISSION EXPIRES 3 JULY 09 HARFORD COUNTY MD

Notary Public

This is to certify that the within instrument was prepared by a party to the said instrument.

ATTORNEY AT LAW

PRINT NAME: Melissa K. Hyle
Jason Close
Closing Agent

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Form 3031 1/01

MD HARFORD COUNTY CIRCUIT COURT Land Record # 3958 Ck 43 2:21:27 Book MCR 3958 p 305 Receipt # 63702 7/9/09 09:31:30AM

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27958 306

ADJUSTABLE RATE RIDER
(MTA Index - Payment Cap)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

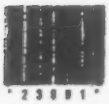
PARCEL ID #:

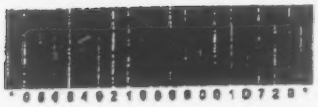
Prepared By:
SHERYL SIKDER

00005684921907004
(Doc ID #)

CCMV
• ARM PayOption Rider
1DT29-US (07/02).01(d)

Initials: _____





MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-27912] Book MDR 27958, p. 0306. Printed 12/20/2017 Online 08/31/2004

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DOC ID #: 00005684921907004

THIS ADJUSTABLE RATE RIDER is made this EIGHTH day of JULY, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Countrywide Bank, a Division of Treasury Bank, N.A.

("Lender") of the same date and covering the property described in the Security Instrument and located at:
10109 ASHWOOD DR.
KENSINGTON, MD 20895
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THE NOTE.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.750 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-27912] Book MGR 27958, p. 0307. Printed 12/20/2007. Online 05/11/2004

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DOC ID #: 00005684921907004

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of OCTOBER, 2004, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding TWO & THREE-QUARTERS percentage point(s) (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest rate will never be greater than 9.950 %.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-7791] [Instk MOR 27958, p. 0308, Printed 12/20/2007 Online 08/31/2004

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DOC ID #: 00005684921907004

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the FIRST day of each month beginning on August, 2004. I will make these payments every month until I have paid all the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on JULY 01, 2034, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 660694, Dallas, TX 75266-0694

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 1,070.66. This amount may change.

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of AUGUST, 2005, and on that day every 12th month thereafter. Each of those dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment". The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-27942] Book MQR 27888, p. 0389 Printed 12/20/2007 Online 09/01/2004

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DOC ID #: 00005684921907004

required monthly payment will be lesser of the Limited Payment and the Full Payment. I also have the option each month to pay more than the Limited Payment up to and including the Full Payment for my monthly payment.

(E) Addition to My Unpaid Principal

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to Principal will be the rate required by Section 2 above.

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid principal can never exceed a maximum amount equal to ONE HUNDRED FIFTEEN percent(115 %) of the Principal amount I originally borrowed. My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount that would be sufficient to repay my then unpaid principal in full on the Maturity Date in substantially equal installments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I also will begin paying the Full Payment as my monthly payment on the final Payment Change Date.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-279 : 2] Book MDR 27958, p. 0310. Printed 12/7/2017 Online 08/31/2004

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DOC ID #: 00005684921907004

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-27912] Book MOR 37958 p 0311, Printed 12/20/2007 Online 06/13/2004

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07958 312

DOC ID #: 00005684921907004

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Charles E. Biggs Jr. (Seal)
CHARLES E. BIGGS -Borrower

Jeanne O. Biggs (Seal)
JEANNE O. BIGGS -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

DCMV
® ARM PayOption Rider
1D729-US (07/05).01

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MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-27512] Book MDR 27958, p. 0312. Printed 12/20/2007 Online 08/31/2004

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Exhibit A

Lot numbered Nine (9) in Block Numbered Eight (8) in the subdivision known as "Block 7 and Parts of Blocks 1 and 8 Parkwood", as per Plat of said subdivision recorded in Plat Book 39, at Plat 2766, one of the Land Records for Montgomery County, Maryland.

The improvements thereon being known as No. 10109 Ashwood Drive, Kensington, MD 20895.

BEING the same lot of ground which, by Deed dated 06/24/59, and recorded among the Land Records of Montgomery County, Maryland, in Liber No. 2617, folio 580, was granted and conveyed by Raymond B. Gochenour and Alice M. Gochenour unto Charles B. Biggs, Jr. and Jeanne O. Biggs.

C.E.B.
J.O.B.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) (MSA CE 63-27912) Book MDR 27958, p. 0313, Printed 12/20/2007 Online 06/21/2004

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27958 314

REFINANCE AFFIDAVIT

The undersigned hereby certify that they are the original Borrowers, that the property which is subject to this Deed of Trust is their principal residence and that the amount secured by this Deed of Trust has been borrowed for the purpose of refinancing an existing Deed of Trust/Mortgage with Chase Manhattan Mortgage Corporation, recorded among the Land Records in Liber 16727, folio 289, and that the principal balance due under that Deed of Trust as of this date is $285,518.58. Based on a diligent inquiry and is true to the best of my knowledge information and belief.

WITNESS:

As to All

Charles E. Biggs, Jr. (SEAL)

Jeanne O. Biggs (SEAL)

STATE OF MARYLAND, Harford, to wit:

I HEREBY CERTIFY, that on this 9th day of July, 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Charles E. Biggs, Jr. and Jeanne O. Biggs, the parties herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledge the foregoing to be their act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

Notary Public

ROBERT E. MOORE NOTARY PUBLIC HARFORD COUNTY MY COMMISSION EXPIRES 3/05/05

My Commission Expires: _____

THIS IS TO CERTIFY that the within Deed of Trust was prepared by, or under the supervision of the undersigned, and Attorney duly admitted to practice before the Court of Appeals of Maryland.

Attorney

SA-22

33165 391

After Recording Return To:
COUNTRYWIDE HOME LOANS INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
San Diego, CA 92410-0423

Please Return To:
GovRemand Solutions
18345 Shady Grove Road
Suite #188
Rockville, MD 20850

MONTGOMERY COUNTY, MD
APPROVED BY
OCT 13 2006
TRANSFER TAX PAID
TRANSFER TAX PAID

MAX TO 06135512

[Space Above This Line For Recording Data]

0001503922909004
(Doc ID #)

FILED
MONTGOMERY COUNTY
CIRCUIT COURT
2006 OCT 16 P 4:07

DEED OF TRUST

MIN 100133?-0001603354 6

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated SEPTEMBER 22, 2006 , together with all Riders to this document.

(B) "Borrower" is

JAMES O RIGGS, AND CHARLES S RIGGS JR

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

Countrywide Bank, F.S.B.

Lender is a BANK. ASSN.

organized and existing under the laws of THE UNITED STATES

Lender's address is

1199 North Fairfax St. Ste 500, Alexandria, VA 22314

(D) "Trustee" is

ASCOM TRUST CORPORATION

225 WEST WILLOWBROOK DRIVE, WILLIAMSBURG, VA 23185

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

MONTGOMERY COUNTY CIRCUIT COURT Land Records

SA-23

33165 792

DOC ID #: 00013051912101004

(F) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 23, 2004 . The Note states that Borrower owes Lender
FOUR HUNDRED SIXTY FIVE THOUSAND And 00/100

Dollars (U.S. $ 465,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 01, 2044 .
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of MONTGOMERY
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: which currently has the address of

10109 ASHWOOD DR , SILVER SPRING
[Street/City]

Maryland 20903-6241 ("Property Address"):
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have

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sure or a the lessee against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

3. Application of Payments or Proceeds. Except as otherwise described in this Section 3, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any amount exists after the payment is applied to the full payment of one or more Periodic Payments, such amount may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

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4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debts of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's

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rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may obtain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer

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selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes

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Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

12. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA_CE 63-33122] Book MOR 13401, p. 0198, Printed 12/21/2021 Online 10/17/2008.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to

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Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale, assent to decree, and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall mail or cause Trustee to mail a notice of sale to Borrower in the manner prescribed by Applicable Law. Trustee shall give notice of sale by public advertisement and by such other means as required by Applicable Law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and by notice to any other parties as required by Applicable Law. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 5.000 % of the gross sale price and reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Borrower, in accordance with Title 14, Chapter 200 of the Maryland Rules of Procedure, does hereby declare and assent to the passage of a decree to sell the Property in one or more parcels by the equity court having jurisdiction for the sale of the Property, and consents to the granting to any trustee appointed by the assent to decree of all the rights, powers and remedies granted to the Trustee in this Security Instrument together with any and all rights, powers and remedies granted by the decree. Neither the assent to decree nor the power of sale granted in this Section 22 shall be exhausted in the event the proceeding is dismissed before the payment in full of all sums secured by this Security Instrument.

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22. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall release this Security Instrument and mark the Note "paid" and return the Note to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Possession of the Property. Borrower shall have possession of the Property until Lender has given Borrower notice of default pursuant to Section 22 of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Jizzie O Biggs (Seal)
JIZZIE O. BIGGS -Borrower

Charles E. Biggs, Jr. (Seal)
CHARLES E. BIGGS JR -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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DOC ID #: 40013039922M01006

STATE OF MARYLAND,

I Hereby Certify, That on this 22nd day of September, before me, the subscriber, a Notary Public of the State of Maryland, in and for the personally appeared

Jeanne S Biggs

Charles E Biggs III

known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My Commission Expires:

Notary Public

STATE OF MD

I Hereby Certify, That on this 22nd day of September 2006, before me, the subscriber, a Notary Public of the State of MD and for the county personally appeared

Michael A Perry

the agent of the party named by the foregoing Deed of Trust, and made oath in due form of law that the consideration recited in said Deed of Trust is true and bona fide as therein set forth and that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party or parties secured by the Deed of Trust to the Borrower or to the person responsible for disbursements of funds at the settling transaction or their respective agent as a draw not later than the execution and delivery by the Borrower of this Deed of Trust; and also made oath that he is the agent of the party or parties secured and is duly authorized to make this affidavit.

AS WITNESS my hand and notarial seal.

My Commission Expires:

Notary Public

This is to certify that the within instrument was prepared by a party to the instrument.

Colina Mason

COLINA MASON

Printed

Countrywide Bank, FA

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) MSA CE 63-33128 Book MCR 33165 p. 0802 Printed 12/20/2007 Online

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ADJUSTABLE RATE RIDER

(PayOption MTA Twelve Month Average Index - Payment Caps)

06RV2929 0001505992290900G
(Escrow/Closing #) (Doc ID #)

THIS ADJUSTABLE RATE RIDER is made this TWENTY-SECOND day of SEPTEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Countrywide Bank, N.A.

("Lender") of the same date and covering the property described in the Security Instrument and located at:

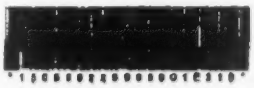
10109 ASHWOOD DR,
KENSINGTON, MD 20895-4241
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows:



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DOC ID #: 0001505992290

7. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first monthly payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 8.250 %. Additional days interest collected prior to the first monthly payment due date is sometimes called "Per Diem" interest and is due at the time I close my loan. Thereafter until the first Interest Rate Change Date, defined below in Section 2(B), I will pay interest at a yearly rate of 2.000 %. This rate is sometimes referred to as the "Start Rate" and is used to calculate the initial monthly payment described in Section 3. The interest rate required by this Section 2 of the Note is the rate I will pay both before and after any default described in Section 7(B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of NOVEMBER, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 575/1000 percentage point(s) (3.575 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). The rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

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I will make my monthly payments on the FIRST day of each month beginning on November, 2006 . I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 01, 2046 , I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 660694, Dallas, TX 75266-0694

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. $ 1,408.14 , unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of NOVEMBER, 2007 , and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for any monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This 7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075 . The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lower of the Limited Payment and the Full Payment.

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10/19/2006

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(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent(115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my Minimum Payment would cause me to exceed that limit, I will instead pay a new Minimum Payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay any then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the tenth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, the Note Holder may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." The Payment Options are calculated using the new interest rate in accordance with Section 2(D). I may be given the following Payment Options:

(i) Interest Only Payment: the amount that would pay the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Amortized Payment: the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

* PayOption MTA ARM Rider
1E310-XX (0906)

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(iii) 15 Year Amortized Payment: the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

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DOC ID #: 0001505992299906

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

JOANNE O. BIGGS (Seal) -Borrower

CHARLES E. BIGGS JR. (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

1 Pay Option MTA ARM Rider
1E310-IX (09/05)

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA_CE 63-31102] Total MOR 17165, p. 0808. Printed 12/28/2021 Online ID: 1619201.

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Schedule "A" 33165 809

LOT NUMBERED NINE (9) IN BLOCK NUMBERED EIGHT (8), IN THE SUBDIVISION KNOWN AS "BLOCK 7, AND PARTS OF BLOCKS 1 AND 8, PARKWOOD", AS PER PLAT OF SAID SUBDIVISION RECORDED IN PLAT BOOK 39, AT PLAT 3766, ONE OF THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.

File No. 86RV2929

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) MSA CE 62-33 1278 (Instr MCR 33165 p. 0809 Printed 12/20/2002 Online 10/1/2002

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File No. 04EV2529
Tax ID #: 04139513
Title Insurer: FIRST AMERICAN TITLE INSURANCE COMPANY

33165 018

MARYLAND REFINANCE AFFIDAVIT

Pursuant to section 12-108(g), Tax Property Article, Annotated Code of Maryland, the undersigned does hereby make oath or affirm, under penalties of perjury, that the following statements are true and correct:

1. that the undersigned is/are the original mortgagor(s);
2. that the property known mortgaged is the principal residence of the undersigned original mortgagor(s); and
3. that the amount of the unpaid principal balance of the debt secured by the original mortgage or deed of trust that is being refinanced is $315700.55 and recorded among the aforesaid land records in Liber 32578, folio 263.

Charles L Biggs (Mortgagor)
CHARLES L. BIGGS, III

Diane O Biggs (Mortgagor)
DIANE O. BIGGS

_____ (Mortgagor)

_____ (Mortgagor)

State of: Maryland
County of: MONTGOMERY, to wit:

Subscribed, sworn to and acknowledged before me, this 22nd day of September, 2006

_____ (SEAL)
Notary Public
My Commission Expires:

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34566 280

Return To:
American Brokers Conduit
1560 Parkstone Blvd, Suite 100
Irving, TX 75063-2360

ret to:
Settlement Solutions
15245 Shady Grove Road
Suite #155
Rockville, MD 20850

MONTGOMERY COUNTY, MD
APPROVED BY
JUL 10 2007
$931.50 RECORDATION TAX PD
$ N/C TRANSFER TX

Prepared By:
Kevin Decker
5160 Parkstone Drive
Suite 190A
Chantilly, VA
20151

07RV0793 [Space Above This Line For Recording Data] Tax ID# 01139518

reference

DEED OF TRUST

MIN 100034200018193

RECORDING FEE 25.00
TOTAL 40.00
Rec'd 10.07 Rept # 29212
LEX 3692 Blk # 1336
Jul 11, 2007 04:30 PM

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated June 28, 2007 together with all Riders to this document.
(B) "Borrower" is Charles Biggs * AND JEANNE O. BIGGS

*ALSO KNOWN RECORD AS CHARLES E. BIGGS, JR.

Borrower is the trustor under this Security Instrument.
(C) "Lender" is American Brokers Conduit

Lender is a Corporation
organized and existing under the laws of State of New York

DOC #:122791 APN #:0001819336

MARYLAND-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3031 9/01

6A(MD) (0010)

FILED
LORETTA E. KNIGHT
CLERK OF COURT
MONTGOMERY CO.

07 JUL 11 PM 1:01

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) [MSA CE 63-3452] Book LEX 34566, p. 0280. Printed 12/26/2007 Online 07/18/2007.

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Lender's address is 538 Broadhollow Road, Melville, NY 11747

(D) "Trustee" is Andrew Valentine

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated June 28, 2007

The Note states that Borrower owes Lender Five Hundred Thousand and No/100

Dollars

(U.S. $500,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [specify]

Prepayment Rider

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(K) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Montgomery :

(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

SEE ATTACHED LEGAL DESCRIPTION

Parcel ID Number: 1613011139312
10109 Ashwood Dr
Kensington
("Property Address"):

which currently has the address of [Street]
(City), Maryland 20895 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

DOC # 322793 APPL # 0001119356

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any

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or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess Funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within

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10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to

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Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

4. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

5. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

7. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys'

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fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection

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with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the

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default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale, consent to decree, and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall mail or cause Trustee to mail a notice of sale to Borrower in the manner prescribed by Applicable Law. Trustee shall give notice of sale by public advertisement and by such other means as required by Applicable Law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and by notice to any other persons as required by Applicable Law. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of Five (5.00) %, of the gross sale price and reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Borrower, in accordance with Title 14, Chapter 208 of the Maryland Rules of Procedure, does hereby declare and consent to the passage of a decree to sell the Property in one or more parcels by the equity court having jurisdiction for the sale of the Property, and consents to the granting to any trustee appointed by the decree of decree of all the rights, powers and remedies granted to the Trustee in this Security Instrument together with any and all rights, powers and remedies granted by the decree. Neither the consent to decree nor the power of sale granted in this Section 22 shall be exhausted in the event the proceeding is dismissed before the payment in full of all sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee, shall release this Security Instrument and mark the Note "paid" and return the Note to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Possession of the Property. Borrower shall have possession of the Property until Lender has given Borrower notice of default pursuant to Section 22 of this Security Instrument.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Charles Biggs (Seal)
Borrower

JEANNE O. BIGGS (Seal)
Borrower

(Seal) (Seal)
Borrower Borrower

(Seal) (Seal)
Borrower Borrower

(Seal) (Seal)
Borrower Borrower

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STATE OF MARYLAND, Montgomery County ss:

I Hereby Certify, That on this 28th day of June, 2007, before me, the subscriber, a Notary Public of the State of Maryland, in and for the aforesaid County personally appeared Charles Biggs AND JEANNE O. BIGGS

known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge that he/she/they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial seal

My Commission Expires:

NOTARY PUBLIC EXP. 09-01-11 MONTGOMERY COUNTY, MD

Notary Public

STATE OF MD Montgomery County ss:

I Hereby Certify, That on this 28th day of June, 2007, before me, the subscriber, a Notary Public of the State of MD and for the aforesaid County personally appeared

Michael A. Berry

the agent of the party secured by the foregoing Deed of Trust, and made oath in due form of law that the consideration recited in said Deed of Trust is true and bona fide as therein set forth and that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party or parties secured by the Deed of Trust to the Borrower or to the person responsible for disbursement of funds in the closing transaction or their respective agent at a time not later than the execution and delivery by the Borrower of this Deed of Trust, and who made oath that he is the agent of the party or parties secured and is duly authorized to make this affidavit.

AS WITNESS my hand and Notarial seal.

My Commission Expires:

NOTARY PUBLIC EXP. 09-01-11 MONTGOMERY COUNTY, MD

Notary Public

This is to certify that the within instrument was prepared by Kevin Decker, Closer American Brokers Conduit

Kevin Decker FOR

Kevin Decker, Closer, American Brokers Conduit

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ADJUSTABLE RATE RIDER

(First Five Years - Stated Rate, Reduced Initial Payments; 12MTA)

THIS ADJUSTABLE RATE RIDER is made this 29th day of June, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to American Brokers Conduit (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

10109 Ashwood Dr, Kensington, MD 20895
(Property Address).

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. BECAUSE MY MONTHLY PAYMENT DURING THE INITIAL PERIOD WILL BE LESS THAN THE AMOUNT OF THE INTEREST THAT ACCRUES AT THE INITIAL STATED RATE, THE PRINCIPAL AMOUNT I REPAY MAY BE LARGER THAN THE AMOUNT I BORROW, BUT NOT MORE THAN 120.000 % OF THE ORIGINAL AMOUNT (OR $ 600,000.00). THE NOTE LIMITS THE AMOUNT THE MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY. MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 2.875 %. The Note provides for changes in the interest rate and the monthly payments as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on August 1st, 2012, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Board Statistical Release entitled "Selected Interest Rates (H. 15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available 15 days before the first Change Date and each Change Date thereafter is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of and Effective Date of Rate Changes

After the Initial Period, my new interest rate will be calculated by adding Two and Three Quarters percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, my new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment due date after the first Change Date until the amount of my monthly payment changes again as provided in the Note. The date on which my payment changes is called a "Payment Change Date."

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(D) Limits on Interest Rate Changes

The interest rate I am required to pay upon the first Change Date and each Change Date thereafter will not be less than the Margin. My interest rate under this Note will never be greater than 13.950 %.

(E) Initial Monthly Payment Amounts; Possibility of Negative Amortization

During the Initial Period, any minimum required monthly payment will be less than the amount of interest that accrues on the Principal balance of the loan at the Initial Stated Rate. During the Initial Period, for each month that my monthly payment is less than the amount of interest that accrues on the Principal balance of the loan at the Initial Stated Rate, the Note Holder will subtract the amount of the monthly payment from the amount of the interest that accrues on the Principal balance of the loan for that month and add the difference to the Principal balance of my loan and interest will accrue on the on the amount of this difference at the Initial Stated Rate.

(F) Limit on My Unpaid Principal Balance; Increased Monthly Payment

During the Initial Period, the unpaid Principal balance of the loan can never exceed a maximum amount equal to 120.000 % of the Principal amount originally borrowed. In the event the unpaid Principal would otherwise exceed that 120.000 % limitation, the Note Holder will determine the amount of the monthly payments based on the amount sufficient to repay the interest that accrues on the Principal balance of the loan (including previously accrued, unpaid and capitalized interest) at the Initial Stated Interest Rate. This amount will be my new minimum monthly payment until the first Payment Change Date.

(G) Calculation of Payment Changes and Payment Amounts after Initial Period until Month 121

After the Initial Period, changes in my monthly payment will reflect changes in the unpaid Principal of my loan and the interest rate that I must pay. My monthly payment may change on the first Payment Change Date, and on the first day of every month thereafter.

Except as provided in Section 4(H) of this Note, beginning on the first Payment Change Date and the first day of each month thereafter my monthly payment will be based on the amount sufficient to repay the interest that accrues on the Principal balance of the loan at the interest rate that will become effective on the immediately prior Change Date. Except as provided in Section 4(H) of this Note, I will make monthly payments in the amounts as calculated in this Section 4(G) until the next Payment Change Date.

(H) Calculation of Payment Changes and Payment Amounts from Month 121 until Maturity Date

Beginning with the monthly payment due on September 1st, 2017 and for each monthly payment due thereafter until the Maturity Date of the loan, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected Principal balance of the loan in full on the Maturity Date at the interest rate that becomes effective on each Change Date. Until the Maturity Date, I will make monthly payments in the amounts as calculated in this Section 4(H) until the next Payment Change Date.

(I) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) (MSA CE 63-34523) Book LEX 34566, p. 0296. Printed 12/26/2007. Online 07/18/2007.

acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

Charles Biggs _____(Seal) -Borrower

_____(Seal) -Borrower

JEANNE O. BIGGS _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

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34566 298

Loan #: 0001829356

PREPAYMENT RIDER TO SECURITY INSTRUMENT

THIS PREPAYMENT RIDER is made this 11th of June, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to American Brokers Conduit (the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

10109 Ashwood Dr, Kensington, MD 20895
[Property Address]

PREPAYMENT COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

I have the right to make payments of principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

Except as provided below, I may make a Full Prepayment or a Partial Prepayment at any time without paying any penalty. If within the first three (3) year(s) after the execution of the Note, I make a Full Prepayment or Partial Prepayment, I will pay a prepayment charge in an amount equal to the payment of two (2) months advance interest on the amount prepaid which is in excess of thirty three percent (33%) of the original principal amount. Interest will be calculated using the rate in effect at the time of prepayment.

If I make a partial prepayment equal to one or more of my monthly payments, the due date of my next scheduled monthly payment may be advanced no more than one month. If I make a partial prepayment in any other amount, I must still make all subsequent monthly payments as scheduled.

NOTICE TO THE BORROWER
Do not sign this Prepayment Rider before you read it. This Prepayment Rider provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the Note.

MONTGOMERY COUNTY [illegible] Liber LEX 34566, p. 0298 Printed 12/28/2007. Online 07/18/2007.

34566 299

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Prepayment Rider.

Charles Biggs

JEANNE O. BIGGS

MONTGOMERY COUNTY [illegible] Book LEX 34566, p. 0299. Printed 12/26/2007. Online 07/18/2007

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Schedule "A"

34566 300

LOT NUMBERED NINE (9), IN BLOCK NUMBERED EIGHT (8), IN THE SUBDIVISION KNOWN AS "BLOCK 7, AND PARTS OF BLOCKS 1 AND 8, PARKWOOD", AS PER PLAT OF SAID SUBDIVISION RECORDED IN PLAT BOOK 39, AT PLAT 2766, ONE OF THE LAND RECORDS FOR MONTGOMERY COUNTY, MARYLAND.

File No. 07RV0793

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File No. 07RV0793
Tax ID #: 1139512
Title Insurer: FIRST AMERICAN TITLE INSURANCE COMPANY 34566 301

MARYLAND REFINANCE AFFIDAVIT

Pursuant to section 12-108(g), Tax Property Article, Annotated Code of Maryland, the undersigned does hereby make oath or affirm, under penalties of perjury, that the following statements are true and correct:

1. that the undersigned is/are the original mortgagor(s);
2. that the property herein mortgaged is the principal residence of the undersigned original mortgagor(s); and
3. that the amount of the unpaid principal balance of the debt secured by the original mortgage or deed of trust that is being refinanced is $465,000.00 and recorded among the aforesaid land records in Liber 33165, folio 791.

CHARLES E. BIGGS, JR. (Mortgagor)

JEANNE O. BIGGS (Mortgagor)

State of: Maryland
County of: MONTGOMERY, to wit:

Subscribed sworn to and acknowledged before me this 28th day of June, 2007.

(SEAL)
Notary Public
My Commission Expires:

DAVID ISMAN NOTARY PUBLIC EXP. 05-01-11 MONTGOMERY COUNTY, MD